

No. 14,586

IN THE

United States Court of Appeals
For the Ninth Circuit

NG YIP YEE,

Appellant,

vs.

BRUCE G. BARBER, District Director, Im-
migration and Naturalization Service,
Appellee.

APPELLEE'S BRIEF.

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Appellee.

APPELLEE'S BRIEF.

STATEMENT.

Appellant, Ng Yip Yee, arrived at the port of San Francisco on August 27, 1953 and sought admission to the United States as a citizen of the United States. Appellant's claim to citizenship is founded upon alleged blood relation, as a son, to Ng Ah Saw, an alleged native born citizen of the United States. An administrative hearing in accordance with Public Law 414 of the 82nd Congress, 66 Stat. 163, Title 8 U.S.C. 1101 et seq., was conducted and upon the conclusion thereof, and the appeals therefrom, the final determination was made by the Attorney General of the United States that appellant was not entitled to admission to the United States.

Appellant by habeas corpus proceedings requested the Court below to review the administrative proceedings. The appeal herein is from the order of the District Court (tr. p. 20) denying the writ of habeas corpus and dismissing the petition after review of the final determination of the Attorney General that appellant is not entitled to admission to the United States.

JURISDICTION.

Although not invoked by citation in the petition, the jurisdiction of the Court below is found in Title 8 *U.S.C.* 1503(c) (P.L. 414, §360(c)). The District Court is a Court of competent jurisdiction to review, in habeas corpus proceedings, the final determination of the Attorney General that appellant is not entitled to admission to the United States.

Title 28 *U.S.C.* §2253 is cited as authority conferring jurisdiction of this Court to review the order of the District Court upon the review of the administrative proceedings.

STATUTE.

8 *U.S.C.* 1503(c) (P.L. 414, §360(c)) 66 Stat. 163, 273.

QUESTIONS PRESENTED.

Appellant has made no attempt to present any questions involved or to state the manner in which they are raised. Simple reference has been made to the "Specification of Errors" page 27 of the transcript, which is there identified as "Statement of Points".

An analysis of the Statement of Points discloses two possible questions:

(1) That the court below erred in holding that the contention of appellant regarding the relative powers of the Secretary of State and the Attorney General in determining petitioner's citizenship have been foreclosed by *Ng Yip Yee v. Barber*, 210 F. 2d 613 (9th Cir.) cert. den. 347 U.S. 988. (Points 2, 6, 11, 12.)

(2) That the Court below erred in finding after review of the administrative record that appellant's rights were fully protected; that there were no procedural irregularities of any substance; and that he received a full and fair hearing of his claim. Points 1, 3, 4, 5, 7, 8, 9, 10.

ARGUMENT.**I.**

In *Ng Yip Yee v. Barber*, 210 F. 2d 613, cert. den. 347 U.S. 988, appellant herein sought by habeas corpus proceedings to test the validity of his detention by the Immigration and Naturalization Service pending exclusion hearings which had been commenced to

determine his citizenship and right of entry. Appellant contended as he does here, that the issuance of the passport by the American Consul at Hong Kong was an adjudication or determination of his citizenship.

It is well established that a passport is merely a request to foreign governments for safe passage of the individual concerned and is not a determination of the individual's citizenship as between the United States and the individual.

Urtetiqui v. D'Arcy, 9 Pet. 692, 698;

Miller v. Sinjen (CA-8), 289 Fed. 388, 394-395;

Edsell v. Mark (CA-4), 179 Fed. 292;

Lee Pong Tai v. Acheson (E.D.Penn. 1952),
104 F. Supp. 503, 505;

Scott v. McGrath (E.D. N.Y. 1952), 104 F.
Supp. 267;

Hackworth Digest of International Law, Vol.
III, pp. 435-436.

This Court in *Ng Yip Yee v. Barber*, *supra*, held:

"The appellant obviously was a person whom the officer of the service 'suspected to be an alien' attempting to enter the United States. Appellant is not in either of the exceptions of Sec. 235(b).

"Since this administrative proceeding is being conducted by the officer specifically empowered by statute so to do, appellant has not exhausted his the officer of the service 'suspected to be an alien' administrative remedy and is not entitled to seek relief through this habeas corpus proceeding

* * *."

Appellant thereafter did exhaust the administrative proceeding as the record thereof well shows, and now seeks such review of the said proceeding as may be afforded him under 8 U.S.C. 1503(c).

Jow Chu Yun v. Barber (CA-9), #14503 and 14504 decided by this Court April 15, 1955;
Florentine v. Landon (CA-9), 206 F. 2d 870.

II.

THE COURT BELOW DID NOT ERR IN FINDING APPELLANT'S RIGHTS WERE FULLY PROTECTED, THAT THERE WERE NO PROCEDURAL IRREGULARITIES, AND THAT HE RECEIVED A FULL AND FAIR HEARING ON HIS CLAIM TO CITIZENSHIP.

The administrative proceeding involved herein is an *exclusion* proceeding as distinguished from an *expulsion* proceeding. Appellant is not within the United States.

Nishimura Ekiu v. United States, 142 U.S. 651;
United States v. Ju Toy, 198 U.S. 253;
Kaplan v. Tod, 267 U.S. 228;
Shaughnessy v. Mezei, 345 U.S. 206;
Jew Sing v. Barber (CA-9), 215 F. 2d 906;
United States v. Spar (CA-2), 149 F. 2d 881.

Section 1503(c) of Title 8 U.S.C. (P.L. 414, §360(c)) provides for a review of the administrative proceeding in habeas corpus. The entire record of the administrative proceeding is in the file. The court below did review the record and denied the

writ and dismissed the petition. Appellant seeks further review by his appeal.

Quon Quon Poy v. Johnson, 273 U.S. 352;
United States v. Sing Tuck, 194 U.S. 161;
United States v. Ju Toy, 198 U.S. 253;
Tang Tun v. Edsell, 223 U.S. 673;
Jow Chu Yun v. Barber, *supra*.

III.

APPELLANT'S ARGUMENT ON THE SPECIFICATION OF ERRORS, OR STATEMENT OF POINTS PRESENTS NO MATERIAL QUESTION REQUIRING FURTHER REVIEW OF THE VOLUMINOUS ADMINISTRATIVE RECORD.

1. *First Specification of Error.*

The argument and authorities cited are the same as submitted on the previous appeal, *Ng Yip Yee v. Barber*, *supra*, and are disposed of by the decision in that case.

2. *Second Point of Error.*

This point is likewise founded on the passport argument and has been disposed of by the previous ruling of the Court.

3. The *Third Point* is not mentioned.

4. *Fourth and Fifth Specifications of Error.*

Appellant makes nothing of these specifications and neither does appellee. The hearings were reopened to permit appellant to present any evidence.

5. *Point Six.*

Appellant has never been admitted to the United States. There has been no determination of his citizenship prior to the final determination of the Attorney General that he is an *alien*. *Choy Yuen Chan v. United States*, 30 F. 2d 516, cited by appellant under this point is a deportation *expulsion* proceeding and has no bearing upon this case.

6. *Point Seven.*

Appellant makes no point here other than his dissatisfaction with the ruling of the Court.

7. *Errors Eight and Nine.*

Appellant likewise here asks the Court to disagree with the hearing officer, the Board of Immigration Appeal, and the Court below.

The finding of fact of the executive department is conclusive.

United States v. Ju Toy, supra;

Quon Quon Poy v. Johnson, supra.

The Courts have no power to interfere unless there was—

(a) a denial of a fair hearing,

Chin Yow v. United States, 208 U.S. 8.

(b) the finding was not supported by evidence,

American School of Magnetic Healing v. Mc-Nulty, 187 U.S. 90.

(c) there was an application of an erroneous rule of law,

Gegiow v. Uhl, 239 U.S. 3;

Ng Fung Ho v. White, 259 U.S. 276.

8. *Errors Ten, Eleven and last point of Error.*

Appellant's argument and citation of authority under the above points have added nothing which requires further consideration.

Jow Chu Yun v. Barber, supra.

CONCLUSION.

It is respectfully submitted that appellant was afforded a full and fair hearing on his claim to citizenship. The Court below has reviewed the record in accordance with Title 8 U.S.C. 1503(c) and affirmed the final determination of the Attorney General adverse to appellant. The order of the Court below should be affirmed.

Dated, San Francisco, California,

May 20, 1955.

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